

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 98-0654 ST
SALES AND USE TAX

For Tax Periods: 1996 Through 1997

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ISSUES

1. Sales and Use Tax-Rental of Accomodation for less than 30 Days

Authority: 45 IAC 2.2-4-27, IC 6-2.5-4-4, 45 IAC 2.2-4-9(a), 45IAC 2.2-4-8 (e), *3551 Lafayette Road Corporation v. Department of Revenue*, 644 NE2d 199 (Ind. Tax Court 1994).

Taxpayer protests the assessment of sales tax on group events.

2. Sales and Use Tax-Sales Tax Paid at Time of Purchase

Authority: IC 6-2.5-3-2.

Taxpayer protests the assessment of use tax on items which Taxpayer alleges it paid sales tax at the time of purchase.

3. Tax Administration-Negligence Penalty

Authority: IC 6-8.1-10-2.1

Taxpayer protests the imposition of the negligence penalty.

Statement of Facts

Taxpayer operates an indoor go-kart center for individual and group events. Drivers at this center participate in professionally organized and supervised

races. A gift shop and snack shop are located on the premises. Taxpayer offers three types of events. Open practice is an opportunity for individuals to come in and practice driving in ten-minute sessions. Open race events are offered at pre-determined times and individuals can race on a first come, first served basis. Taxpayer also offers group events when the karting center is open only to the members of a certain group that has rented the entire facility and racing services. Taxpayer protested an assessment of additional sales and use tax for the period 1996 and 1997. More facts will be provided as necessary.

1. Sales and Use Tax-Rental of Accommodation for Less than 30 Days

Discussion

The Indiana Department of Revenue Auditor did not assess sales tax on open practice and open race events. The drivers are limited to operating the kart within the racetrack and do not exercise control of the property. Drivers must attend the safety and procedure briefing before "suing up" and racing the vehicles. On the track, drivers are expected to adhere to the track procedures or be "black flagged" for a lap or more. All drivers are continuously observed and supervised by track officials. During the event, all drivers are limited to operating their vehicles within the race track and following the rules of Taxpayer. Drivers merely drive their vehicles within the parameters set by Taxpayer. Taxpayer's track officials control all aspects of the race. The facts of this type of lease meet the requirements of 45 IAC 2.2-4-27 as a non-taxable service since the drivers do not exercise control of the vehicles.

The audit assessed sales tax only on Taxpayer's group events. Groups may make advance reservations to participate in exclusive events in which the racing portion of the center and the opportunity to race is closed to the public. The group may reserve track time for either LeMans (teams) or Grand Prix (individual) style races for which medals are awarded to the top three finishers in each style race. Drivers must follow procedures identical to those of open practice or races. The public may enter the facility, watch the racers, shop at the gift shop and eat at the snack bar. The fee for group events is based on a price per driver.

Indiana imposes a sales tax on retail transactions made in Indiana. IC 6-2.5-2-1. Most services in Indiana are not subject to the sales tax. Renting rooms or accommodations, however, is a service that is specifically defined as a taxable retail transaction in the following section of IC 6-2.5-4-4.

- (a) A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, and banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person:
 - (1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and
 - (2) if the rooms, lodgings, and accommodations are located in a hotel, motel, inn, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.

Regulation 45 IAC 2.2-4-9(a) provides further that an “accommodation” is:

Any space, facility, structure, or combination thereof including booths, display spaces and banquet facilities . . . which is intended for occupancy by human beings for less than 30 days including:

- (1) Rooms in hotels, motels, lodges, ranches, villas, apartments or houses.
- (2) Gymnasiums, coliseums, banquet halls, ballrooms or arenas and other similar accommodations regularly offered for rent.
- (3) Cabins or cottages.
- (4) Tents or trailers (when situated in place).
- (5) Spaces in camper parks and trailer parks wherein spaces are regularly offered for rent for periods of less than 30 days.
- (6) Rooms used for banquets, weddings, meetings, sales displays, conventions or exhibits.
- (7) Booths or display spaces in a building coliseum or hall.

The issue to be determined is whether Taxpayer rents an “accommodation” to the group and thus provides a service which is defined as a taxable retail transaction or provides a non-taxable entertainment service as in the open practices and open races.

The Auditor contends that Taxpayer’s rental of its facility to a single, specified group of people meets the requirements of the rental of a taxable “accommodation.” If Taxpayer’s rentals to private groups is a taxable rental of an accommodation, then the total receipts from the rental including all receipts from services rendered are subject to the gross retail tax pursuant to the following provisions of 45 IAC 2.2-4-8 (e):

The tax is imposed on the gross receipts from “furnishing” an accommodation. The gross receipts subject to tax include the amount which represents consideration for the rendition of those services which are essential to the furnishing of the accommodation, and those services which are regularly provided in furnishing the accommodation. Such amounts are subject to tax even when they are separately itemized on the statement or invoice.

A person who rents one of the “accommodations” listed in the statute and regulation would have exclusive control of that room or building. A person renting a hotel room has the right to exclude others from that room. A group renting a gymnasium for a basketball tournament has the right to exclude those not associated with the tournament from the gymnasium. In this case, those groups using Taxpayer’s services do not have the right to stop walk in traffic from eating at the snack bar, observing the practices and races or shopping in the gift shop. Walk in traffic is merely precluded from using Taxpayer’s racing services

Rents for the “accommodations” listed in the statute are defined by the real estate itself. Someone planning a wedding reception in a banquet hall or ballroom first chooses and rents a facility. The rent is paid for use of the room itself. Anything additional such as food preparation, drinks, wait staff is separately billed. Sales tax is imposed on the rent for the facility and on anything else provided that is considered taxable. Taxpayer does

not charge based on the value of the facility. Rather taxpayer charges per person who uses its racing services.

In Taxpayer's situation, consideration is not exchanged for a space. Consideration is exchanged for the opportunity to participate in a racing event. Taxpayer provides the services allowing this event to take place. The mere fact that 16 drivers pay for seat time in a kart cannot transform the karting facility into an accommodation under Indiana law. The services provided to the group are no different than the services provided to the general public.

Finding

Taxpayer's protest is sustained.

2. Sales and Use Tax-Sales Tax Paid at Time of Purchase

Discussion

Pursuant to IC 6-2.5-3-2, Indiana imposes an excise tax on the "storage, use, or consumption of tangible personal property in Indiana" unless sales tax is paid on the item at the time of purchase or rental or the item is used in an exempt manner. Taxpayer protested the assessment of use tax on several items such as office and race supplies on which Taxpayer alleged that it had paid sales tax. Taxpayer did not produce adequate evidence that sales tax had been paid on the audited items. Therefore the use tax properly applies.

Finding

Taxpayer's protest is denied.

3. Tax Administration- Penalty Negligence

Taxpayer's final point of protest concerns the imposition of the negligence penalty that was imposed pursuant to IC. 6-8.1-10-2.1 (a) which states as follows:

If a person fails to . . . pay the full amount of tax shown on his return on or before the due date for the return or payment, incurs, upon examination by the department, a deficiency which is due to negligence,. . . the person is subject to a penalty.

The law and regulations are clear that use tax must be paid when sales tax is not remitted on a purchase and that adequate records must be maintained to substantiate any exemptions. Taxpayer carries the burden of proving that the assessment is incorrect. Taxpayer failed to sustain this burden.

Finding

Taxpayer's protest to the imposition of the negligence penalty is denied.